

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JARVON D. GREEN,

Plaintiff,

v.

SERGEANT SMITH, et al.,

Defendants.

No. 2:22-cv-1472 KJM KJN P

ORDER

Plaintiff, a state prisoner proceeding pro se, filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 6, 2022, the magistrate judge filed findings and recommendations, which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. F&R, ECF No. 10. Plaintiff has not filed objections to the findings and recommendations.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate] court . . .”).

////

1 Having reviewed the file, the court finds the findings and recommendations to be
2 supported by the record and by the proper analysis. The magistrate judge cites to *Albino v. Baca*,
3 747 F.3d 1162, 1166 (9th Cir. 2014), for the proposition “courts may dismiss a claim if failure to
4 exhaust is clear on the face of the complaint.” F&R at 2; *see also Wynn v. Escarcega*,
5 No. 121CV00202, 2021 WL 2383334, *1 (E.D. Cal. June 10, 2021). *Albino* does not explicitly
6 discuss a court’s power but holds “[i]n the rare event that a failure to exhaust is clear on the face
7 of the complaint, a defendant may move for dismissal under Rule 12(b)(6).” *Id.* Because courts
8 have the power to dismiss actions sua sponte under Rule 12(b)(6), this court has the authority to
9 dismiss petitioner’s claim. *See Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987).

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The findings and recommendations filed October 6, 2022, are adopted in full;
- 12 2. This action is dismissed; and
- 13 3. The clerk of court is directed to close this case.

14 DATED: December 15, 2022.

15
16 
17 CHIEF UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23
24
25
26
27
28